IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8061 of 2004
With
SPECIAL CIVIL APPLICATION No. 8163 of 2004
With
SPECIAL CIVIL APPLICATION No. 12408 of 2004
To
SPECIAL CIVIL APPLICATION No. 12425 of 2004
With
SPECIAL CIVIL APPLICATION No. 12652 of 2004
To
SPECIAL CIVIL APPLICATION No. 12670 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHANI VILLAGE PANCHAYAT THROUGH SARPANCH - Petitioner(s)

Versus

RAMSINH JOKHABHAI MEDA & 18 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner No(s).: 1.

MRS RANJAN B PATEL for Petitioner No(s).: 1.

MR SHALIN N MEHTA for Respondent No(s).: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,19. - for Respondent No(s).: 0,0.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 02/08/2005

ORAL JUDGMENT

1. Rule. So far as Special Civil Application No.8061 of 2004 and 12652 to 12670 of 2004 are concerned, Shri Shalin Mehta, learned advocate waives service of Rule on behalf of the respondent workmen. With the consent of the learned advocates appearing on behalf of the parties, the matters are heard today finally.

2. Special Civil Application No.8061 of 2004 and Special Civil Application Nos.12652 to 12670 of 2004 are the group of petitions filed by Chhani Village Panchayat challenging the judgment and award passed by the Labour Court, Vadodara dated 12th July, 1999 passed in Reference (LCB) No.224 of 1996 as well as the order dated 3rd November, 2003 passed by the Labour Court, Vadodara passed in Misc. Civil Application No.36 of 2002 in so far as while quashing and setting aside the exparte judgment and awards passed in Reference (LCB) No.224 of 1996, the Labour Court has directed the petitioner – Chhani Panchayat to pay the amount of Rs.7,000/- to each workman towards the costs.

3. So far as Special Civil Application No.8163 of 2004 and Special Civil Application No.12408 to 12425 of 2004 are filed by the concerned workmen challenging the order passed by the Labour Court, Vadodara dated 3.11.2003 passed in Misc. Application No.36 of 2002, by which, the Labour Court, Vadodara has allowed the said application under Rule-26-A of the Industrial Disputes (Gujarat) Rules, 1966 and setting aside the exparte award dated 12th July, 1999 passed in Reference (LCB) No.224 of 1991.

4. As the common questions of law and facts arise in this group of petitions, the same are being disposed of by this common judgment and order.

5. Few facts are necessary for the purpose of determination of the present special civil applications. The concerned workmen raised the industrial dispute challenging their alleged oral termination and/or retrenchment with effect from 20th July, 1990 contending interalia that they were serving as the Daily wager Safai Kamdar with Chhani Village Panchayat since many years and their services came to be terminated without following any procedure as required under Section-25-F of the

Industrial Disputes Act. The said dispute was referred to the Labour Court, Vadodara being Reference (LCV) No.579 of 1990. It appears that during the pendency of the said reference, all the concerned workmen were reemployed and/or reinstated and it is alleged that again their services came to be terminated with effect from 26th February, 1991 and as according to the concerned workmen, same was done without following any procedure as required under the provisions of the Industrial Disputes Act, the workmen again raised the industrial dispute which was referred to the Labour Court, Vadodara for its adjudication being Reference (LCH) No.224 of 1996. It appears from the record that said Reference (LCV) No.579 of 1990 came to be decided and disposed of earlier in point of time and the Labour Court, Vadodara by its judgment and award dated 29th May, 1998 allowed the said reference partly directing Chhani Village Panchayat to reinstate the concerned respondent workmen with 90 % backwages except those workmen who had expired and order came to be passed to pay 90 % of the backwages upto the death of the concerned workmen. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Vadodara dated 29th May, 1998 passed in Reference (LCV) No.579 of 1990, Chhani Panchayat has preferred writ petition being Special Civil Application No.3719 of 1999 which is admitted by the learned Single

Judge of this Court and interim relief is granted so far as the award of backwages is concerned. It appears that thereafter Reference (LCV) No.224 of 1996 came to be decided by the Labour Court,. Vadodara and it appears that though they were served and the written statement was filed, thereafter, nobody remained present on behalf of the Chhani Panchayat and therefore, the Labour Court, Vadodara by its judgment and award dated 112th July, 1999 has proceeded further with the Reference exparte and partly allowed the said reference directing the petitioner Panchayat to reinstate the concerned workmen with 80 % of the backwages from the date of their termination i.e. 26th February, 1991 till they are reinstated. Thereafter, Chhani Panchayat has filed miscellaneous application being Mis. Application No.36 of 2002 in Reference (LCV) No.224 of 1996 under Rule-26-A of the Industrial Disputes (Gujarat) Rules, 1966 for setting aside the exparte judgment and award passed in Reference (LCV) No.224 of 1996 and the Labour Court, Vadodara by its order dated 3rd November, 2003 has allowed the said application and set aside the exparte judgment and award passed in Reference (LCV) No.224 of 1996 and passed the order to decide and dispose of the Reference (LCV) No.224 of 1996 on merits, however, imposed condition directing the Panchayat to pay amount of Rs.7,000/- to each of the workman towards the cost. Being aggrieved and

dissatisfied with the judgment and award passed by the Labour Court, Vadodara in Reference (LCV) No.224 of 1996 as well as the judgment and order passed by the Labuor Court, Vadodara dated 3.11.2003 passed in Misc. Application NO.36 of 2002 in so far as imposing the cost of Rs.7,000/- to be paid to each workman, Chhani Panchayat has preferred aforesaid Special Civil Applications No.8061 of 2004 and SCA Nos.12652 to 12670 of 2004. Simultaneously, the concerned workmen had also preferred SCA Nos.12408 to 12425 of 2004 challenging the judgment and order passed by the Labour Court, Vadodara dated 3.11.2003 passed in Misc. Application No. 36 of 2002 by which the Labour Court, Vadodara has set aside the exparte judgment and awards passed in Reference (LCV) No.224 of 1996 and directed to decide and dispose of the Reference on merits.

6. Heard Shri B.S.Patel, learned advocate appearing on behalf of Chhani Panchayat and Shri Girish Patel, learned Senior Advocate with Shri Shalin Mehta, learned advocate appearing on behalf of the workmen concerned.

7. Shri B.S.Patel, learned advocate appearing on behalf of Chhani Panchayat has submitted that in the facts and circumstances of the case

and considering the financial condition of the Panchayat so also the fact that the concerned workmen were serving as Daily Wager – Safai Kamdar, imposition of cost at the rate of Rs.7,000/- per workman while setting aside the exparte judgment and award is too harsh and disproportionate, more particularly, prima facie the period in question in Reference (LCV) No.224 of 1996 is by and large covered by the judgment and award passed by the Labour Court, Vadodara passed in Reference (LCV) No.579 of 1990. It is submitted that in fact, services of the workmen are not required and it is not possible for the petitioner Panchayat to pay Rs.7,000/- to each workman towards the cost for quashing and setting aside the exparte judgment and award. Therefore, it is requested to allow the present special civil applications filed by Chhani Panchayat.

8. Shri Girish Patel, learned senior advocate appearing on behalf of the concerned workmen has submitted that in fact, there is no period over-lapping in Reference No.579 of 1990 and Reference No.224 of 1996. It is submitted that in fact the concerned workmen had filed Recovery Applications pursuant to the judgment and awards passed in Reference No.579 of 1990 claiming the wages only for the period prior to 25.2.1991. It is also further submitted that in view of the fact that the

concerned workmen were reinstated and/or reemployed on 25th February, 1991 after Reference (LCV) No.579 of 1990, as such, reinstatement order in Reference No.579 / 90 is of no consequences and was not warranted at all. It is further submitted that considering the fact that the concerned workmen had filed Special Civil Applications and considering their status in life and that they are coming from lower strata, as such, the order passed by the Labour Court while quashing and setting aside the exparte judgment and awards to pay amount of Rs.7,000/- to each of the workman, is not required to be interfered with. It is submitted that on the contrary, it is case of the concerned workmen that there was total negligence on the part of the Panchayat for not remaining present at the time when Reference No.224 of 1991 was decided and disposed of.

9. After aforesaid submissions and after the matters were heard at length, there is consensus between the parties and Shri B.S.Patel, learned advocate appearing on behalf the Panchayat has made a statement that if the matter is remanded to the Labour Court, Vadodara for its fresh decision, even during the pendency of the proceedings before the Labour Court, Chhani Panchayat will engage the concerned respondent workmen as per their requirements and without exhausting

the list of the respondents concerned workmen, Chhani Panchayat will not engage any other daily wager and Chhani Panchayat will at least engage them and/ or provide them work on alternative day and question of payment of cost while quashing and setting aside the exparte judgment and award and remanding the matter is left to the discretion of the Court.

10. Similarly, Shri Girish Patel, learned senior advocate with Shri Shalin Mehta, learned advocate appearing on behalf of the respondent workmen have submitted hat if some reasonable cost is awarded, they have no objection if the Court is setting aside the exparte judgment and award. Therefore, in view of the aforesaid statement made by Shri B.S.Patel, learned advocate appearing on behalf of Panchayat and keeping in mind that if the reference on remand is decided and disposed of as early as possible within stipulated time frame and suitable directions are issued directing the Panchayat to co-operate in early disposal of the reference, in my opinion, considering the facts and circumstances of the case and aforesaid consensus, if the following order is passed, will meet the ends of justice between the parties.

(i) The judgment and order passed by the Labour Court, Vadodara dated 3.11.2003 passed in Misc. Application No.36 of 2002 is modified to the extent that instead of Rs.7,000/-, the petitioner Chhani Panchayat will pay an amount of Rs.4,500/- to each of the concerned workmen towards the cost for setting aside the exparte judgment and award. The said amount to be paid to the concerned workmen within period of eight weeks from today to the concerned workmen directly and the concerned workmen to issue receipts with regard to the same in favour of the Chhani Panchayat.

(ii) On production of the receipts of payment of Rs.4,500/- to each of the workman towards the cost as stated above, the Labour Court, Vadodara is directed to decide and dispose of Reference (LCV) NO.224 of 1991 as early as possible preferably within a period of four months from the date of receipt of this order but not later than 15th January, 2006.

(iii) The petitioner Chhani Panchayat as well as the

concerned workmen are directed to cooperate in early disposal of the aforesaid Reference (LCV) No.224 of 1996 and will not ask for any unnecessary adjournments and the learned advocates for the concerned parties have also assured to this Court that both the parties will extend their full cooperation to the Labour Court concerned for an early disposal of the aforesaid Reference (LCV) No.224 of 1996.

(iv) Chhani Panchayat is directed to comply with the statement made by Shri B.S.Patel which is stated hereinabove i.e during the pendency of the proceedings before the Labour Court, Vadodara, the petitioner Chhani Panchayat will engage the concerned workmen only as per their requirements and without exhausting the list of the concerned workmen, they will not engage any other daily wager and Chhani Panchayat will at least engage the concerned workmen and/or provide them work on alternate day.

11. For the reasons stated above, and in view of the aforesaid directions, Special Civil Application Nos.8061 of 2004 and Special Civil Application Nos.12652 to 12670 of 2004 are partly allowed to the

aforesaid extent and the judgment and order passed by the Labour Court dated 3rd November, 2003 passed in Misc. Application No.36 of 2002 stands modified to the aforesaid extent. Rule is made absolute to the aforesaid extent in each of the aforesaid matters.

12. In view of the orders passed in Special Civil Application No. 8061 of 2004 and Special Civil Application Nos.12652 to 12670 of 2004, Shri Girish Patel, learned senior advocate and Shri Shalin Mehta, learned advocate for the concerned workmen does not press the petitions preferred by the concerned workmen i.e. Special Civil Application Nos.8163 of 2004 and Special Civil Application No.12408 to 12425 of 2004 and accordingly, they are disposed of having not pressed.

13. Notice issued in Special Civil Application Nos.8163 of 2004 and Special Civil Application No.12408 to 12425 of 2004 stand discharged.

14. Cost as quantified in earlier paragraphs to be paid by Chhani Panchayat accordingly.

Directions to be complied with accordingly.

[M.R.Shah, J.]

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